APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/721,333	11/26/2003	Damien Galand	Q78594	8615

23373   7590   09/09/2009
SUGHRUE MION, PLLC
2100 PENNSYLVANIA AVENUE, N.W.
SUITE 800
WASHINGTON, DC 20037

EXAMINER
KANG, SUK JIN

ART UNIT	PAPER NUMBER
2419	

MAIL DATE	DELIVERY MODE
09/09/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action **Before the Filing of an Appeal Brief**	Application No. 10/721,333	Applicant(s) GALAND ET AL.
	Examiner SUK JIN KANG	Art Unit 2419

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>26 August 2009</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☒ The period for reply expires <u>3</u> months from the mailing date of the final rejection.

   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

      Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b)☐ They raise the issue of new matter (see NOTE below);

   (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

      NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: <u>1-11</u>.

   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.

13. ☐ Other: _____.

/Chirag G Shah/
Supervisory Patent Examiner, Art Unit 2419

Continuation of 11. does NOT place the application in condition for allowance because: The prior art reads on the rejected claims and thus the rejection is maintained. Applicant argues, on pages 2-3 of the Remarks, that the cited prior art fails to teach or suggest, "degradation means for degrading at least one quality parameter of at least one of said data flows..., wherein said degradation means makes use of a module associated with each session, for carrying out the said degradation,... [and wherein] said module relates to at least an impact of a degradation of at least one quality parameter on the quality of at least one of said data flows."

The Examiner respectfully disagrees with the Applicant's argument because Applicant's admitted prior art, as specifically modified by the combination of Gai and Raz, discloses a degradation means for degrading at least one quality parameter of at least one of said data flows in order to compensate for the difference in throughputs between the said telecommunication network and the said access network, wherein said degradation means makes use of a module associated with each session, for carrying out the said degradation, the said module being determined by the said first client; and said module relates to at least an impact of a degradation of at least one quality parameter on the quality of at least one of said data flows.

Gai teaches and suggests a degradation means (intermediate device and local policy enforcer, 210, figure 3) for degrading at least one quality parameter of at least one of said data flows in order to compensate for the difference in throughputs between the said telecommunication network and the said access network (column 3, lines 47-56; column 4, lines 59-63; column 5, lines 20-27; column 6, line 67; column 7, lines 1-4, 8-13, and 39-52; the policy enforcer monitors traffic flows and enforces policy or service treatments, which may include degrading of quality parameters of the flows, in order to modify and shape traffic flows based on bandwidth and other considerations).

Raz discloses making use of a module (active packets; column 4, lines 15-18) associated with each session (column 4, lines 51-59 and 65-67; column 5, lines 1-5), the said module (active packets containing programs) being determined by the said first client (column 4, lines 51-67; column 5, lines 1-9; column 10, lines 31-33); and said module relates to at least an impact of a degradation of at least one quality parameter on the quality of at least one of said data flows (column 4, lines 51-59; column 5, lines 10-17; column 6, lines 4-10 and 41-47; column 9, lines 7-15 and 30-33; active packets are impacted by resources consumed be each session in relation to a degrading of a quality parameter of the session traffic).

Therefore, as combined, an active program contained in an active data packet (module) may be used to update or configure an intermediate device/policy enforcer (degradation means) to monitor traffic flows and enforce policy or service treatments, which may include degrading of quality parameters of the flows, in order to modify and shape traffic flows based on bandwidth and other considerations. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate using active packets used to carry out specific functions such as monitoring resource consumption and other quality parameters within the network as taught by Raz with the policy enforcer and degradation means as disclosed by Gai within the telecommunication network as disclosed by AAPA for the purpose of providing a direct method for modifying data flow sessions.

Applicants are reminded that claims subject to examination will be given their broadest reasonable interpretation consistent with the specification. In re Morris, 127 F.3d 1048, 1054-55 (Fed. Cir. 1997). As a matter of fact, the "examiner has the duty of police claim language by giving it the broadest reasonable interpretation." Springs Window Fashions LP v. Novo Industries, L.P., 65 USPQ2d 1862, 1830, (Fed. Cir. 2003). Applicants are also reminded that claimed subject matter not the specification, is the measure of the invention. Disclosure contained in the specification cannot be read into the claims for the purpose of avoiding the prior art. In re Sporck, 55 CCPA 743, 386 F.2d, 155 USPQ 687 (1986).